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10/550,086

07/27/2006

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EXAMINER

WOOD, JONATHAN K

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/550,086 | Applicant(s) DECOTTIGNIES ET AL. | |
| | Examiner JONATHAN WOOD | Art Unit 4137 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/20/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 10 is objected to because of the following informalities: Line 2 used quotations for the term airless. This practice is unnecessary. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 7, 9, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 7 recites the limitation "the sleeve" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to 'a sleeve' or define a sleeve earlier in the claim.
5. Claim 9 recites the limitations "the tube", "the body", "its fastening end", "the sleeve", and "its anchor means" in lines 2 and 3. There is insufficient antecedent basis for these limitations in the claim.
6. Claim 15 recites the limitation "the cap" in line 1. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to 'a cap' or define a cap earlier in the claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5, and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 3,141,580 to *Rogers (Rogers)*.

Rogers teaches:

In Reference to Claim 1

A fluid dispenser comprising: a fluid reservoir (container 10) serving to contain fluid; and a dispenser head (dispensing portion 13) mounted on the reservoir to take fluid from the reservoir, said head defining a dispensing chamber (Figure 1) communicating with the reservoir via an inlet valve (valve opening 23) and communicating with the outside at a dispensing orifice (forward opening 15) via an outlet valve (nipple 14); said dispenser being characterized in that the chamber comprises at least one elastically deformable actuating wall (sides, col. 2, line 34; col. 2, ll. 46-48) that is depressed in order to generate a pressure inside the chamber that is high enough to close the inlet valve and to open the outlet valve (col. 2, ll. 29-42).

In Reference to Claim 2

A dispenser according to claim 1 (see rejection of claim 1 above), in which the actuating wall is formed by a sleeve (portion 13) that is at least locally flexible

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(Figure 3) and that internally defines a portion of the dispensing chamber (Figure 1).

In Reference to Claim 3

A dispenser according to claim 1 (see rejection of claim 1 above), in which the head has a top (nipple 14) opposite from the reservoir (Figure 1), the dispensing orifice being placed substantially at the top of the head (Figure 1).

In Reference to Claim 4

A dispenser according to claim 1 (see rejection of claim 1 above), in which the outlet valve forms the dispensing orifice from which the dispensed fluid can be collected (Figure 1).

In Reference to Claim 5

A dispenser according to claim 2 (see rejection of claim 2 above), in which the sleeve has a stationary end forming anchor means (threads, col. 2, line 18) and an opposite end forming a flexible lip (nipple 14) in leaktight abutment against a seat (forward end 17), the lip and the seat together forming the outlet valve (col. 2, ll. 35-42).

In Reference to Claim 7

A dispenser according to claim 1 (see rejection of claim 1 above), in which the head further has a tube (cylindrical housing 19) having a fastening end (col. 2, ll. 20-21) and an opposite end forming an outlet valve seat (forward end 17), the sleeve extending around the tube (Figure 1).

In Reference to Claim 8

A dispenser according to claim 7 (see rejection of claim 7 above), in which the tube defines an internal volume (A, Figure 1 below as annotated by examiner) in which the inlet valve is received, the internal volume communicating with a peripheral volume (B, Figure 1 below as annotated by examiner) that extends around the tube inside the sleeve via at least one through opening (inherently at least one opening for proper operation of device), the dispensing chamber including the internal volume and the external volume.

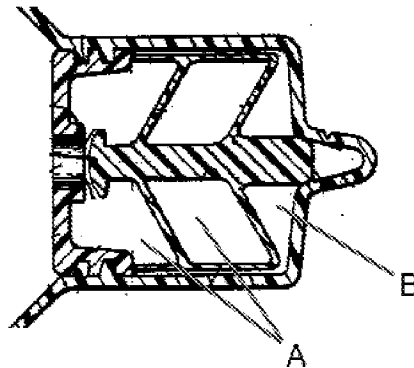


Figure 1, as annotated by examiner

In Reference to Claim 9

A dispenser according to claim 1 (see rejection of claim 1 above), in which the tube (cylindrical housing 19) is fastened to the body (closure member 20) via its fastening end (col. 2, ll. 20-21), the sleeve (portion 13) being fastened to the tube and to the body via its anchor means (threads, col. 2, ll. 15-19).

9. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,601,212 to *Lee* (*Lee*).

Lee teaches:

In Reference to Claim 1

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A fluid dispenser comprising: a fluid reservoir (container 10) serving to contain fluid; and a dispenser head (dispensing nipple 12) mounted on the reservoir to take fluid from the reservoir, said head defining a dispensing chamber (Figure 1) communicating with the reservoir via an inlet valve (valve 18) and communicating with the outside at a dispensing orifice (opening 23) via an outlet valve (ball valve 20); said dispenser being characterized in that the chamber comprises at least one elastically deformable actuating wall (walls, col. 5, ll. 22-23) that is depressed in order to generate a pressure inside the chamber that is high enough to close the inlet valve and to open the outlet valve (col. 5, ll. 23-28).

In Reference to Claim 6

A dispenser according to claim 1 (see rejection of claim 1 above), in which the head has a body (connector 26) forming a ring (concentric cylinders 32 and 36) serving to co-operate with the reservoir for fastening the head to the reservoir (col. 4, ll. 7-19), said body forming an inlet valve seat (valve seat 40).

10. Claims 1-2, 10-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,169,039 to *Kay et al.* (*Kay*).

Kay teaches:

In Reference to Claim 1

A fluid dispenser comprising: a fluid reservoir (fluid storage body 14) serving to contain fluid; and a dispenser head (nosetip 18) mounted on the reservoir to take fluid from the reservoir, said head defining a dispensing

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chamber (discharge chamber 108) communicating with the reservoir via an inlet valve (check valve member 42) and communicating with the outside at a dispensing orifice (fluid discharge opening 22) via an outlet valve (valve stopper 30); said dispenser being characterized in that the chamber comprises at least one elastically deformable actuating wall (wall 66, col. 6, ll. 23-27) that is depressed in order to generate a pressure inside the chamber that is high enough to close the inlet valve and to open the outlet valve (col. 10, ll. 44-58).

In Reference to Claim 2

A dispenser according to claim 1 (see rejection of claim 1), in which the actuating wall is formed by a sleeve (Figure 1) that is at least locally flexible (col. 6, ll. 23-27) and that internally defines a portion of the dispensing chamber (Figure 1).

In Reference to Claim 10

A dispenser according to claim 1 (see rejection of claim 1 above), in which the reservoir is "airless", i.e. it does not have any air intake (col. 9, ll. 8-15).

In Reference to Claim 11

A dispenser according to claim 1 (see rejection of claim 1 above), in which the reservoir is elongate and is preferably in the form of a fine tube (Figure 1).

In Reference to Claim 12

A dispenser according to claim 1 (see rejection of claim 1 above), having the general shape of a pen that can be grasped in the hand in the manner of a

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pen, so that at least one finger of the hand is placed on the actuating wall with the dispensing orifice disposed at the tip of the pen (Figure 1).

In Reference to Claim 13

A dispenser according to claim 2 (see rejection of claim 2 above), in which the sleeve is surrounded by a substantially rigid sheath (outer shell 60) that defines at least one window (cutout 53) giving access to the actuating wall (Figure 1).

In Reference to Claim 14

A dispenser according to claim 2 (see rejection of claim 2 above), in which the sleeve is provided with a cap (outer shell 60) preventing access to the actuating wall (Figure 1).

In Reference to Claim 16

A dispenser according to claim 14 (see rejection of claim 14 above), in which the cap has a collar (reduced thickness connection portion 102) in contact with the sleeve (Figure 1).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Kay* in view of US Patent No. 6,983,865 to *Cabarroque et al. (Cabarroque)*.

Kay teaches:

A dispenser according to claim 13 (see rejection of claim 13 above), in which a cap (cap 23) is mounted.

Kay fails to disclose:

The cap being able to turn on the rigid sheath and is provided with at least one opening serving to come into register with said at least one window in a manner such as to enable the actuating wall to be accessed through a window and through an opening, with the window and the opening being mutually in register.

Cabarroque teaches:

A dispenser with a cap (cap 50) able to turn on a rigid sheath (body 1), with a side wall which selectively covers the actuating element (actuating system 40).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have manufactured the dispenser head cap of *Kay* utilizing the teaching of *Cabarroque* to allow the cap to rotate about the exterior of the dispenser and selectively cover the actuation element in order to prevent unwanted actuation of the dispenser (*Cabarroque*, col. 4, ll. 24-29). The combination would result in the cap being rotated to cover the actuating wall of *Kay* versus being rotated to uncover the actuating wall. It would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized a window to uncover the actuating wall upon rotation versus utilizing a side wall to cover the actuating wall, since it has been held that a mere

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reversal of the essential working parts of a device involves only routine skill in the art.

In re Einstein, 8 USPQ 167.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US Patent No. 5,439,146 to *Niss* and US Patent No. 3,107,035 to *Cholet* disclose alternative resilient walled dispensing chambers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Bomberg can be reached on (571)272-4922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/

Examiner, Art Unit 4137

/Kenneth Bomberg/

Supervisory Patent Examiner, Art Unit 4137